

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-16113-RAP
)	
DAVID HAYDEN LOOMIS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 110940,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent David Hayden Loomis (respondent) was charged with violating California Rules of Court, rule 9.20, by willfully failing to comply with rule 9.20 as ordered by the Supreme Court. He failed to appear at the trial of this case and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 12, 1983, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 24, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On November 8, 2012, respondent filed his response to the NDC.

By order filed December 26, 2012, the trial was set to start on January 24, 2013. The order setting the trial date was served on respondent at his membership records address.³ (Rule 5.81(A).)

On January 24, 2013, the State Bar appeared for trial but respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering respondent's default that next day. The order notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On May 10, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A),

³ Respondent's membership records address was also the address provided in his response.

the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no other disciplinary matters pending in investigation; (3) respondent has one record of prior discipline; and (4) the Client Security Fund has paid out one claim as a result of respondent's misconduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on June 5, 2013.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on October 19, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years, including a suspension of one year and until payment of restitution. In this matter, respondent stipulated to failing to maintain \$13,155.46 in his trust account, in willful violation of rule 4-100(A) of the California Rules of Professional Conduct.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-N-16113 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of the proceedings prior to the entry of his default, as he filed a response to the NDC and was properly served with notice of the trial date;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent David Hayden Loomis be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that David Hayden Loomis, State Bar number 110940, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: July 22, 2013

RICHARD A. PLATEL
Judge of the State Bar Court